

ORDINANCE # 2304**AMENDING ORDINANCE #2282 REGULATING POLITICAL CONTRIBUTIONS
TO LOCAL POLITICAL CANDIDATES AND OFFICE HOLDERS FROM
DEVELOPERS ENTERING INTO AGREEMENTS FOR REDEVELOPMENT
PROJECTS**

WHEREAS, N.J.S.A. 40A:12A-8 allows municipalities or a designated redevelopment entity to enter into agreements with redevelopers for planning, replanning, construction or undertaking of any project or redevelopment work without public bidding and at such prices and upon such terms as it deems reasonable within areas designated for redevelopment; and

WHEREAS, N.J.S.A. 40A:12A-11 provides that redevelopment entities are instrumentalities of the municipality; and

WHEREAS, both the exceptions to the Open Public Meetings Act, more specifically N.J.S.A. 10:4-12b, and N.J.S.A. 40A:12A-8 provide that negotiations for such agreements can be conducted in executive session, provided the full terms of any such agreements are discussed and approved in open session; and

WHEREAS, given the potential of negotiating with private parties or redevelopers and the entering into agreements with such redevelopers without a formal public bidding process, as permitted by the Local Redevelopment and Housing Law, it is necessary to establish certain limitations on political contributions which may undermine public confidence in any redevelopment effort; and

WHEREAS, the restriction against local political contributions contained herein does not impair in any way the remaining opportunities for such redevelopers to speak, write and publish their sentiments about local elections and candidates or to volunteer or associate with campaigns of their own choosing; and

THEREFORE, be it ordained by the Borough of Somerville, in the County of Somerset and State of New Jersey, that any entity or individual seeking to enter into a redevelopment agreement or amendment thereto or is otherwise seeking to obtain rights to develop pursuant to a redevelopment agreement, who makes political contributions to elected officials and local political parties and Somerset County Political Parties in excess of \$299 in one calendar year (which is the ELEC (Election Law Enforcement Commission) reportable amount per election cycle) will be ineligible to receive such agreements, or rights from the Borough of Somerville.

directing the planning board to conduct a preliminary investigation to determine if the site is in need of redevelopment pursuant to and in accordance with the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., and the date of entering into the redevelopment agreement.

- (c) All redevelopment agreements or amendments thereto entered into by the Borough of Somerville shall contain a provision prohibiting redevelopers as defined in section (c) to solicit or make any contribution of money or pledge of a contribution including in-kind contributions and loans any municipal candidate for Mayor or Council, or to the any local campaign committee, or holder of public office within the Borough of Somerville having responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the Borough of Somerville.
- (d) As defined in N.J.S.A. 40A:12A-3, a "redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.. For the purposes of this ordinance the definition of a redeveloper includes all principals who own ten percent (10%) or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the provider as well as any affiliates or subsidiaries directly controlled by the redeveloper. Spouses and adult children at home shall also be included.
- (d) For the purposes of this section, the office that is considered to have responsibility for arranging and entering into the redevelopment agreement under the Act shall be:
 - 1. The Borough Council if the redevelopment agreement requires approval or appropriation from the Council or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by Council; or
 - 2. The Mayor of Borough if the redevelopment agreement requires the approval of the Mayor or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Mayor; or

II. Contributions made prior to the effective date

No contribution of money or any other thing of value, including in-kind contributions, made by a redeveloper to any Borough candidate for any municipal candidate for Mayor or Council, or to the any local campaign committee, or

Somerset County Political Party shall be deemed a violation of this section nor shall an agreement for redevelopment projects of any kind whatsoever be disqualified thereby if that contribution or agreement was made by the redeveloper prior to the effective date of this section.

III. Notice given by Municipality; Sworn Statement of Redeveloper

- (a) It shall be the municipality's continuing responsibility to give notice of this Section when the municipality gives notice of redevelopment pursuant to 40A:12A-6 and when the municipality adopts a resolution directing the planning board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.
- (b) Prior to arranging and entering into the redevelopment agreement with any redeveloper, the Borough or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the redeveloper that the redeveloper has not made any contribution in violation of Section 1(a) above. Furthermore, the redeveloper shall have a continuing duty to report any violations of this ordinance that may occur while arranging and entering into the redevelopment agreement, and until all specified terms of the agreement have been completed. The certification required under this subsection shall be made prior to entry into the agreement with the municipality and shall be in addition to any other certifications that may be required by any other provision of law.

IV. Contribution Restrictions and Disclosure Requirement Applicability to Consultants

- (a) The contribution and disclosure requirements in this Ordinance shall apply to all redevelopers as well as professionals, consultants or lobbyists contracted or employed by the business entity ultimately designated as the redeveloper to provide services related to the:
 - 1) Lobbying of government officials in connection with the examination of an area and its designation as an area in need of redevelopment or in connection with the preparation, consultation and adoption of the redevelopment plan.
 - 2) Obtaining the designation or appointment as redeveloper
 - 3) Negotiating the terms of a redevelopment agreement or any amendments or modifications thereto; and
 - 4) Performing the terms of a redevelopment agreement

- (b) It shall be a breach of the consultant's contract, and shall require immediate termination, for a consultant to violate the contribution limits and disclosure requirements in this Ordinance.
- (c) A redeveloper who participates in, or facilitates, the circumvention of the contribution restrictions through consultants or professionals shall be deemed to be in breach.

V. Return of Excess Contributions

A redeveloper or municipal candidate or officeholder or municipal party committee referenced in this ordinance may cure a violation of Section 1 of this Act, if, within 30 days after the date on which the applicable ELEC Report is published, the redeveloper notifies the Municipal Council in writing and seeks and receives reimbursement of the excess of the allowable contribution from the municipal candidate or municipal or county political party or PAC referenced in this ordinance.

VI. Penalty

- (a) It shall be a breach of the terms of the Borough's redevelopment agreement for a redeveloper to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received in excess of the allowable amount; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution in excess of the allowable amounts; (iv) make or solicit any contribution in excess of the allowable amount on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of the Borough of Somerville; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the redeveloper itself, would subject that entity to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this ordinance.
- (b) Furthermore, any redeveloper who violates (a) ii-viii shall be disqualified from eligibility for future Borough redevelopment agreements for a period of four calendar years from the date of the violation.

BE IT FURTHER ORDAINED, that the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid

for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately upon final passage and publication in accordance with the law.

BE IT FURTHER ORDAINED, that all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 2. Effective Date:

This ordinance shall become effective on July 1, 2009



Mayor



Municipal Clerk

Introduced:	May 18, 2009
First Publication:	May 19, 2009
Adopted:	June 1, 2009
Final Publication:	June 2, 2009

